

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**SCM, USA, a/k/a BEVERAGE PLUS, INC.**

**and**

**Case No. 29-CA-28626**

**INDUSTRIAL WORKERS OF THE WORLD,  
INDUSTRIAL UNION 460/640**

*James Kearns, Esq.*, Counsel for the General Counsel.

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge:** This case was heard by me on March 4, 2008 in Brooklyn, New York. The Complaint herein, which issued on January 15, 2008, and was based upon an unfair labor practice charge that was filed on November 9, 2007<sup>1</sup> by Industrial Workers of the World, Industrial Union 460/640, herein called the Union, alleges that SCM, USA, a/k/a Beverage Plus, Inc., herein called the Respondent, violated Section 8(a)(1)&(3) of the Act by threatening its employees with discharge if they continued to support the Union, and by discharging its employee, Bernardo Basquez on about October 5 because of his support of, and assistance to, the Union as well as other protected concerted activities. Respondent failed to file an Answer in response to this Complaint. By letter dated January 29, 2008 the regional office wrote to Respondent notifying it of its delinquency, and giving Respondent until the close of business on February 5, 2008 to file an Answer, stating that unless an Answer was received by that date, the region would seek a default judgment on the allegations of the Complaint; however, no Answer was received. Therefore, at the hearing, Counsel for the General Counsel moved for default judgment, which motion I granted. Based upon the pleadings herein, I make the following findings of fact and conclusions of law:

1. The charge in this matter was filed by the Union on November 9, and a copy was served by regular mail on Respondent on November 15.

2. At all material times, Respondent, a domestic corporation, with its principal office and place of business located at 5887 55<sup>th</sup> Street, Maspeth, New York, herein called its Maspeth facility, has been engaged in the business of the wholesale sale and distribution of beverages.

3. During the past twelve month period, Respondent, in the course and conduct of its business operations, purchased and received products valued in excess of \$50,000 from points outside the State of New York.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, the Union has been a labor organization within the meaning of

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2007.

Section 2(5) of the Act.

6. At all material times, Mr. Chow, first name unknown, has held the position of Respondent's president and has been an agent of the Respondent acting on its behalf.

7. On October 5 the Union filed the Petition in Case No. 29-RC-11511 seeking to represent a unit of Respondent's employees.

8. On a date in early September, Respondent, by Mr. Chow, at its Maspeth facility, threatened its employees with discharge if they continued to support the Union.

9. On or about October 5, Respondent discharged its employee Bernardo Basquez.

10. Since on or about October 5, Respondent has failed and refused to reinstate, or offer to reinstate, Basquez to his former position of employment.

11. Respondent engaged in the conduct described above in paragraphs 9 and 10, because Basquez joined, supported or assisted the Union and in order to discourage its employees from engaging in such activities, or other concerted activities.

12. By the conduct described above in paragraph 8, Respondent has been interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraphs 9 through 11, Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **The Remedy**

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist from engaging in these activities and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. In that regard, having found that the Respondent discriminatorily discharged Basquez, I recommend that the Respondent be ordered to offer him immediate reinstatement to his former position of employment or to a substantially equivalent position if his former position no longer exists. I also recommend that the Respondent be ordered to make Basquez whole for all loss of earnings and other benefits in the manner set forth in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), along with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also remove from its files all references to the termination of Basquez and advise him in writing that it has done so.

On these findings of fact, conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.

Continued

**ORDER**

The Respondent, SCM, USA, d/b/a Beverage Plus, Inc., its officers, agents and  
 5 representatives, shall:

1. Cease and desist from

(a) Threatening its employees with discharge if they continued to support the Union.

(b) Discharging or otherwise discriminating against any employee for engaging in  
 10 activities in support of the Union or other protected concerted activities.

(c) In any like or related manner interfering with, restraining or coercing employees in the  
 15 exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Decision, offer Basquez full reinstatement to his  
 20 former job or, if that job no longer exists, to a substantially equivalent position, without prejudice  
 to his seniority or any other rights or privileges previously enjoyed.

(b) Make Basquez whole for any loss of earnings or other benefits suffered as a result of  
 25 the discrimination against him, in the manner set forth in the Remedy section of this Decision.

(c) Within 14 days from the date of this Decision, remove from its files any reference to  
 the unlawful discharge of Basquez, and within 3 days thereafter, notify him in writing that this  
 has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional  
 30 Director may allow for good cause shown, provide at a reasonable place designated by the  
 Board or its agents, all payroll records, social security payment records, timecards, personnel  
 records and reports, and all other records, including an electronic copy of such records if stored  
 in electronic form, necessary to analyze the amount of backpay due under the terms of this  
 35 Order.

(e) Within 14 days after service by the Region, post at its facility in Maspeth, New York,  
 40 copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by  
 the Regional Director for Region 29, after being signed by the Respondent's authorized  
 representative, shall be posted by the Respondent and maintained for 60 consecutive days in  
 conspicuous places including all places where notices to employees are customarily posted.  
 Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered,  
 defaced, or covered by any other material. In the event that, during the pendency of these

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 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed  
 waived for all purposes.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the  
 notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted  
 50 Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the  
 National Labor Relations Board."

proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 15, 2007.

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(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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**Dated, Washington, D.C., March 20, 2008**

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**Joel P. Biblowitz**  
**Administrative Law Judge**

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**APPENDIX**

**NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** threaten employees with discharge if they continue to support Industrial Workers of the World, Industrial Union 460/640, or any other labor organization.

**WE WILL NOT** discharge, or otherwise discriminate against any employee because that employee engaged in activities in support of a union or any other protected concerted activities.

**WE WILL NOT** in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights under Section 7 of the Act.

**WE WILL** make Bernardo Basquez whole for any loss of earnings and other benefits resulting from his discharge, less any interim earnings, plus interest.

**WE WILL**, within 14 days, remove from our files any reference to the unlawful discharge of Basquez, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

**SCM, USA, d/b/a BEVERAGE PLUS, INC.**  
**(Employer)**

**Dated** \_\_\_\_\_ **By** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

Two MetroTech Center, 5th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.